COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

Writ Petition No. 1088 (M/S) of 2001

Sri Govind Ram Puri and others

Vs.

Board of Revenue and others.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Date: 19-7-2006 ***Initials of Judge***

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 1088 of 2001.
(Old CMWP No. 6003 of 1984)

1. Sri Govind Ram Puri S/O Sri Jaya Nand Puri,
2. Ganesh Mani Puri
3. Sri Satya Narain Puri,
   Petitioners Nos.2 & 3 sons of Shri Shanker Mani,
   All above residents of Kamleshwar Bagwan, Srinagar,
   District Pauri Garhwal.

… **Petitioners**

Vs.

1. Board of Revenue U.P. at Allahabad.
2. The Commissioner Garhwal Division Pauri.
3. The Assistant Collector 1st Class Barahasam , District Pauri Garhwal.
4. Gaon Sabha Aithana Dang, Patti Katulayun, District Pauri through its Pradan.
5. The State of U.P.
6. Surya Kant,
7. Goverdhan Parsad, respondent nos. 6 & 7 :sons of Raghunandan Pd. r/o Kamleswar Bagwan, Srinagar, District Pauri Garhwal.
8. Smt. Kanti Devi, W/O Sri Raghunandan Pd. R/O Kamleshwar Bagwan, Srinagar, patti Katulayun, District Pauri Garhwal.

… **Respondents.**

Sri Lokendra Dobhal, learned counsel for the petitioners.
Learned Standing Counsel for the respondents.

Date July 19, 2006
P.C.: Hon'ble B.S.Verma, J.

By means of this writ petition, the petitioners have prayed for issue a writ, order or direction in the nature of certiorari quashing the judgment and orders (Annexure Nos. 2, 3, 4 and 5 to the writ petition), which are dated 4-12-1978, 7-6-1979, 28-9-1983 and 9-2-1984 respectively passed by the respondents.

Relevant facts are that a Revenue Suit No. 6 of 1977-78 was filed by Govind Ram Puri and others against Raghunandan Prasad and others under the provisions of Section 209/229B of the Z.A. and

L.R.Act, which was dismissed on merit vide judgment and order dated 4-12-1978. The Assistant Collector had observed that the disputed land was purchased by the defendants in the year 1965 and they have continuous possession. It was observed that in the year the plaintiffs tried to grab the said land and the defendants took action and they were given legal possession thereof. Aggrieved, the petitioner-plaintiffs went up in appeal before the Commissioner and the case was registered Z/A. No. 8/78-79. The first appellate court re-assessed the evidence on record and it was held that in the settlement documents the name of Shakambari Devi is recorded as Hissedar and the entry relates long back, therefore, she had all rights to transfer the land by sale. Accordingly, the appeal was dismissed vide judgment and order dated 7-6-1979. Being dissatisfied by the said order, the petitioners went in second Appeal before the Board of Revenue. The Board of Revenue after considering the material has observed as under:-

"Further, the whole controversy in this case has been admitted to be decided on the basis of the document written in 1905. In tenancies, it is not only documents that give or determine any rights, but the rights are also determined by possession, entries in the revenue records and recognition for sufficiently long periods. This aspect is being forgotten by the appellant's counsel while pressing the conditions of 1905 document and the provisions u/s 14(2) of the Hindu Succession Act. Entries were made in the revenue records by mutation in consequence of the deed of 1905, the two settlements had passed in between and before the date of vesting she was recognized as Hissedar and was so entered..... …..and by the provision of law was entitled to become and so became Bhumidhar with effect from 01.7.1965."

It was further observed that ***"it was also found earlier that Khudkasht Hissedari established through recognition for the past 60 years had become a title in itself and could not be affected by any restriction imposed in 1905. Even without the application of this principle, by mere vesting on 01-7-1965 and coming into force of***

KUZA Act the change over into Bhumidhari rights was complete and these rights could not be questioned by the plaintiffs."

Accordingly, the second appeal preferred by the petitioners met with the same fate of dismissal vide order dated 28-9-1983. Aggrieved, the petitioner preferred Review petition, which too was dismissed vide order dated 9-2-1984.

In the present writ petition, the learned counsel for the petitioners have submitted that the trial court has wrongly applied the case law reported in AIR 1970, Allahabad, page 238 and 1968, RD, page 293.

I have already gone through all the judgments under challenge thoroughly and I have already detailed the portions of observations recorded by the Board of Revenue. Right from the court of Assistant Collector up-to the Board of Revenue, there are concurrent findings of fact against the petitioners and the authenticity of the 1905 document, on the basis of which the revenue suit under Sections 209/229B of the U.P.Z.A. and L.R. Act was filed, has been repeatedly considered and the Board of Revenue in its judgment 28-9-1983 has given specific finding after appraisal of the case law in the light of the facts of the case at hand and it was held that the 1905 document is of no help to the plaintiff-petitioners in view of the law referred to above in the cited portion of findings. It is pertinent to mention that in the review, the same argument was advanced before the Board of Revenue. The entire controversy between the parties have been resolved and concluded by the clear cut concurrent findings of the courts below. It was rightly held by the Board of Revenue that the tenancy Act is a Special Act and provision of Section 14(2) the Hindu Succession Act does not apply. The findings recorded by the Second Appellate Court do not call for any interference by this Court.

Having considered the matter from all the four corners, I do not find any infirmity or perversity in the impugned judgments.

The Board of Revenue in paragraph no.7 of the judgment dated 28-9-1983 had already appreciated the Rulings –AIR 1970, Allahabad, page 238 and the ratio of another case-law-“1968, R.D., page 293”: had been considered in paragraph no.5. The judgment of the Board of Revenue in Second Appeal has already answered all the pleas by sound reasoning and elaborate discussion that have been raised by way of present writ petition. The writ petition is devoid of merit and must fail.

The writ petition is hereby dismissed. No order as to costs.

(B.S.Verma,J.)

RCP